

**REMARKS/ARGUMENTS**

Claims 1-3 and 5-67 are currently pending in the above-referenced patent application and are under examination. Applicants acknowledge, with appreciation, the Examiner's indication that "[t]he claims as currently amended obviate all outstanding prior art rejections" (*see*, page 2 of the Office Action). Applicants further acknowledge, with appreciation, the Examiner's indication that "[t]he species rejection has been withdrawn by the Examiner" (*see*, page 2 of the Office Action).

In the Office Action, the brief description of the drawings has been objected to by the Examiner. In addition, claims 1-3 and 5-67 have been newly rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In view of the amendments to the specification and claims and for the foregoing reasons, these remaining objections/rejections have been overcome.

**Objection to the Specification**

In the Office Action, the Examiner has objected to the brief description of the drawings because "while the drawings filed on April 2, 2002 depict Figures 13A, 13B, 18A, 18B, 21A and 21B, the brief description only refers to Figure 13A, 18A and 21. . . [a] recitation of "B" on page 11 of page 8, for example, is not the same reciting 'Figure 18B'" (*see*, page 2 of the Office Action).

In order to expedite prosecution, Applicants have amended the brief description of Figures 13, 18 and 21 to refer explicitly to Figures 13A, 13B, 18A, 18B, 21A and 21B. In view of the amendments to the brief description of these figures, the Examiner's concerns have been overcome. Accordingly, Applicants urge the Examiner to withdraw the objection to the specification.

**Rejection Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-3 and 5-67 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In support of this rejection, the Office Actions states that "[b]ase claims 1 and 33 as amended recite 'the lipid' in item (a). . . [h]owever, it is not apparent as to which lipids

the term 'the lipid' refers to" (*see*, page 2 of the Office Action). The Examiner indicated that this rejection can be overcome by amending the claims to recite "a lipid bilayer of said nucleic acid-lipid particle" (*see*, page 3 of the Office Action).

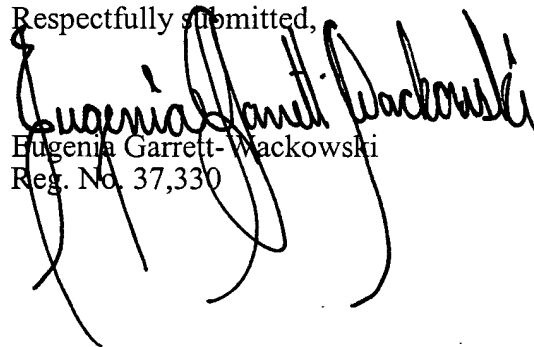
In order to expedite prosecution and in accordance with the Examiner's suggestion, Applicants have amended independent claims 1 and 33 to recite "wherein said nucleic acid is encapsulated in a lipid bilayer of said nucleic acid-lipid particle." In view of the amendments to claims 1 and 33, the Examiner's concern is overcome. Accordingly, Applicants urge the Examiner to withdraw the rejection under 35 U.S.C. § 112, second paragraph.

#### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



Eugenia Garrett-Wackowski  
Reg. No. 37,330

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 925-472-5000  
Fax: 415-576-0300  
EGW:ldr  
60271467 v1